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# Report of the Judicial Justices Compensation Commission

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# Judicial Justices Compensation Commission

Deborah K. Lovett, Q.C., Chair
Gillian Wallace, Q.C.
John Waddell, Q.C.

August 31, 2004

The Honourable Geoff Plant
Attorney General
Province of British Columbia
Parliament Buildings
Victoria, B.C. V8W 9J7

The Honourable Carol Baird Ellan
Chief Judge
Provincial Court of British Columbia
Suite 501, 700 W. Georgia Street
Vancouver, B.C. V7 1E8

Dear Mr. Plant and Chief Judge Baird Ellan:

**Re: Preliminary Report and Recommendations of the 2004 Judicial Justices Compensation Commission**

In accordance with section 5(1) of the *Judicial Compensation Act*, I am pleased to provide each of you with a copy of the Preliminary Report and Recommendations of the 2004 Judicial Justices Compensation Commission.

Yours very truly,

Deborah K. Lovett, Q.C
Commission Chair

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# Introduction

This is the first report of a Judicial Justices Compensation Commission established under the *Judicial Compensation Act*.

Judicial Justices of the Peace play an important role in BC's Provincial Court system, and their judicial independence must be respected and protected. One of the three key elements of judicial independence is financial security. The Supreme Court of Canada has mandated that, to respect financial security, the remuneration of judicial officers like Judicial Justices must be considered periodically by a body which is "independent, objective and effective".

The Judicial Justices Compensation Commission has been established for this purpose. Its mandate is to consider the criteria set out in the *Judicial Compensation Act*, to hear representations from all interested parties, and to recommend to the Legislature appropriate levels of compensation for Judicial Justices of the Peace over a three-year period. The Legislature may reject any of the Commission's recommendations if they are unfair or unreasonable but otherwise, the Judicial Justices are entitled to receive the recommended compensation.

The first report on compensation for Judicial Justices was issued by the Judicial Justices Compensation Committee established under the *Provincial Court Act* in 2002. In the intervening period, the *Judicial Compensation Act* was proclaimed in force, and this Commission was appointed two years later to bring its reporting schedule in line with the government's fiscal reporting period.

# The Judicial Justice of the Peace in British Columbia

There are currently 28 full-time Judicial Justices of the Peace (JJPs), three part-time, and two ad hoc JJPs. They perform two distinct functions in BC's justice system:

- JJPs preside in Provincial Court, in what is often referred to as "traffic court", handling large volumes of traffic and parking ticket cases and other miscellaneous ticket cases, through processes that are practical, speedy, inexpensive and informal.
- JJPs also work shifts at the Judicial Justice Centre where they hear bail applications over the telephone, and consider written applications by police for search warrants as they arrive by fax from around the province. The Judicial Justice Centre operates 24 hours a day.

Some JJPs have a law degree, but it is not a requirement of the position.

In general, JJPs are assigned to matters that can be disposed of simply, quickly and with a minimum of legal analysis. Provincial Court Judges (Judges) handle the court's more complex cases, where the potential results may warrant a more thorough process.

Other Justices of the Peace (JPs) serve our justice system as judicial case managers, and as Court Services JPs. They are not included in this process. Only those officers who have been designated as *Judicial* Justices of the Peace have been found to require the level of judicial independence that this compensation process was designed to provide.

## The Significance of Judicial Independence

British Columbians, like all Canadians, have high expectations of their Judges and the system of the administration of justice. A justice system that operates fairly, openly and impartially is a cornerstone of Canadian society.

JJPs are not Judges, but they perform judicial functions. When they decide whether or not to release a person on bail, they affect the liberty of others; when they either grant or refuse a search warrant to police, they affect important privacy interests; and when they rule on traffic or similar regulatory cases, they are ruling in favour of either the state or the individual. In all such cases, it is essential that they are, and are seen to be, both impartial and independent. These fairness concepts of impartiality and independence are essential to the constitutional principle of judicial independence.

Several court decisions have developed our understanding of what is meant by judicial independence. Perhaps most significantly, the Supreme Court of Canada, in a 1997 case that is known as the *Provincial Court Judges Reference*[1] established that constitutionally, Judges are entitled to judicial independence.

This constitutional imperative flows in part from section 11(d) of the *Canadian Charter of Rights and Freedoms, 1982* (the *Charter*), which requires that tribunals exercising jurisdiction over offences be both "independent and impartial".[2] In a subsequent case dealing specifically with sitting justices of the peace in British Columbia,[3] the British Columbia Supreme Court held that the principles and protections of judicial independence extended to these judicial officers as well as to Judges, although the level of protection afforded to them is not as high.

The principle of judicial independence requires "objective conditions that ensure the judiciary's freedom to act without interference from any other entity".[4] It is an unwritten constitutional principle that has application to all courts and it has institutional as well as individual dimensions. One of the three core elements of judicial independence is financial security.

Financial security in this context requires that JJPs be protected from the possibility or even appearance of political interference with decision-making through government economic manipulation. This does not mean that their salaries cannot be frozen or reduced as part of general economic measures. Rather it means that these actions cannot be taken without recourse to an independent, effective commission. Financial security also demands that JJPs may not collectively or individually directly negotiate with the government about their compensation. Finally, it requires that any salary reductions cannot fall below a basic level of remuneration. Of this latter principle, the Court in the *Provincial Court Judges Reference* case explained: "Public confidence in the independence of the judiciary would be undermined if Judges were paid at such a low rate that they could be perceived as susceptible to political pressure through economic manipulation".

Importantly, financial security is constitutionally enshrined, not as a benefit for JJPs, but rather for the overarching purpose of ensuring that the public can have complete confidence in the integrity and objectivity of our justice system and in the integrity and objectivity of our Judges and JJPs who operate within that system.

To meet this constitutional imperative of financial security, the government enacted the *Judicial Compensation Act*, which provides for the establishment of an independent Judicial Justices Compensation Commission with a mandate to report and make recommendations on the appropriate levels of compensation for JJPs. To ensure that the salaries of JJPs do not fall below the constitutionally required basic remuneration level, the Act directs the Commission to take into account the need to provide reasonable compensation to JJPs, as well as the need to maintain a strong court by attracting qualified applicants.

Accordingly, the Judicial Justices Compensation Commission process is designed to ensure that compensation for JJPs is both sufficient to conform with the level of judicial independence afforded JJPs and is not arrived at by either the unilateral action of government or by direct negotiation between JJPs and the government.

# History of the Judicial Justice of the Peace in BC

The JJP is a relatively new position in BC's justice system and it continues to evolve. The role of JJP was carved out of the broad range of duties previously performed by all JPs throughout the province. It was created in direct response to the British Columbia Supreme Court's decision in *Re Independence of the Provincial Court of British Columbia Justices of the Peace*[5] and the Court's recognition of the legal need for a level of judicial independence for those JPs performing judicial duties—both in court and at the Judicial Justice Centre.

The history of this relatively new position is outlined in the report of the 2002 Judicial Justice Compensation Committee and need not be repeated here.

# What do Judicial Justices of the Peace Do?

## At the Judicial Justice Centre

In offices in a Burnaby office building, the fax machine works round the clock, delivering applications from police officers across the province, for warrants that will allow them to search for evidence in the homes and work places of British Columbians. In their individual offices, JJPs read the Information to Obtain a Search Warrant that accompanies each application and consider whether it meets the requirements of the *Criminal Code*.

The JJP Association reports that in 2003 JJPs ruled on 6,349 applications for search warrants. Some applications are routine but others can be complex and there is often pressure on the JJP to respond quickly because of the needs of the police investigation. The JJP may decide to grant the application, or grant it in a modified form, or refuse it.

The other function performed at the Judicial Justice Centre is bail applications. A person who is taken into police custody has the right to be brought before a judicial officer as quickly as possible for a decision as to whether he or she can be released. If a Provincial Court is available, that is where the bail application will be heard. If there is no court available, either due to geographic distance or time of day, the application will be made by telephone to a JJP at the Judicial Justice Centre.

The JJP takes calls from police officers anywhere in the province. Typically, the officer will be in a room with the accused person. The accused person is put on the line via speakerphone. The JJP will have received the relevant documentation by fax and the conversation is tape-recorded.

In the majority of cases, the JJP cautions the person to consider waiting until the morning when he or she can apply to a Judge for release, after the person has had the benefit of legal advice. Often, the result of that conversation is that the accused agrees to remain in custody overnight, consult with a lawyer, and appear in court the next day. Otherwise, the JJP will make a decision. The Judicial Justice Centre provides services around the clock, so JJPs assigned here work 9.5 hour shifts, four days on and four days off. The overnight shift,

from 10 pm to 8 am, is worked from home, with the JJP being called upon if and when needed.

On weekends, regular bail hearings are held at the Judicial Justice Centre, with the accused "appearing" by telephone from the cells and Crown and duty counsel appearing by another telephone connection from the courthouse at 222 Main Street in Vancouver. This is the bulk of the Centre's weekend work, with an average of 45 adult criminal cases and 2 to 3 youth cases. The Centre also runs bail hearing lists for the Vancouver Provincial Court twice on weeknights, at 6 pm and again at 8 pm with Crown and the accused on the phone. There are generally about 5 to 10 hearings in each of these time slots.

## In Provincial Court

According to government records, JJPs presided over 32% of the 235,715 cases heard in the Provincial Court in 2003. The JJP Association reports that JJPs heard 60,091 summary conviction trials, 20,879 municipal bylaw cases, and 4,203 Small Claims Court payment hearings. The court in which JJPs preside is sometimes referred to as traffic court, as most of the cases heard by JJPs relate to parking and traffic violations.

Traffic court is a busy place as court convenes. Defendants find seats in the courtroom, nervously awaiting their turn. Parking enforcement officers flip through their notebooks, and later might turn to crossword puzzles as they await theirs.

A substantial part of the business here is parking tickets. People come to explain that they were not actually parked, but just stopped while delivering an aunt to the doctor's office. Or, they were not actually "stopped" in the No Stopping zone, but just taking advantage of clogged traffic to jump out and put a letter in the mailbox.

Other cases involve such matters as running red lights or speeding. The JJP listens as a driver explains that he did not disobey the red light as his ticket alleges: he simply didn't see the light. The JJP also hears both police officers and drivers give evidence about their version of alleged speeding violations.

Most people in traffic court appear without a lawyer. Sometimes they use an interpreter. JJPs listen, explain the law that applies, and then deliver their decisions orally, explaining their reasoning in plain language.

This is a high volume court, but defendants often fail to appear and most other cases are disposed of very quickly.

As expressed by the Law Society of BC in its submission: "Judicial Justices do not have the opportunity to reserve and reflect on their decisions. They must get it right the first time, from the bench. They must do so without the benefit of law clerks, often while on the move from community to community throughout the province and with the added pressure of increasing caseloads."

The average "sitting" JJP in the most recent reporting year presided over about 6,000 cases. Average hours on the bench per day were 2.79. This compares to 3.95 hours on average for Judges and probably reflects the fact that there are a large number of "no-shows" in JJP Court.

The absence of lawyers—both to defend and to prosecute the majority of cases heard in this court—places a burden on the JJPs. The defendant is often experiencing the court system for the first time, is usually anxious and may be uncomfortable in the English language. With no lawyers to explain the procedures and relevant law to the defendant, that job falls to the JJP, who must take special care to maintain both the reality and the appearance of impartiality. Still, to some extent, these difficulties have been offset by the introduction of the more relaxed rules of evidence in these proceedings, as discussed below.

### Ad hoc JJPs

Ad hoc JJPs are used to fill vacancies due to illness, both in court and at the Judicial Justice Centre. They are paid on a per diem (daily) basis.

## Recent changes to JJPs' Duties

### More limited jurisdiction

Since the report of the 2002 Judicial Justice Compensation Committee, a number of changes have resulted in a more limited jurisdiction for JJPs.

First, changes to the *Provincial Court Act*[6] mean that, as of July 1, 2003, JJPs no longer have authority to:

- hear a matter for which notice under section 8 of the *Constitutional Question Act* is required or any *Charter* matter for which such notice is not required
- hear cases involving aboriginal or treaty rights or claims,
- preside over matters that could result in imprisonment, or
- commit anyone for contempt of court.

These changes significantly diminish the jurisdiction of JJPs.

Second, the elimination of the photo radar program has reduced some of the demands on JJPs. That program raised a number of issues that affected individuals' rights and defendants often were represented by lawyers making legal arguments. This required JJPs to engage in legal analysis, and written decisions became more frequent. The photo radar program no longer exists and the frequency of written decisions has declined accordingly.

Third, in 2003, the *Offence Act* was amended to simplify certain rules of evidence, reducing the complexity of offence proceedings heard by JJPs. Section 15.1 allows JJPs in ticket cases to take into account evidence that may

not be technically admissible, so long as it is credible and trustworthy. This simplification of the criteria for admissibility recognizes that most JJPs are not legally trained and that formal rules of evidence are not necessary for hearings of this kind. It also makes the process easier for participants to understand.

Finally, other changes have further limited the range of cases heard by JJPs. The Chief Judge has determined that as of September 1, 2004, JJPs no longer hear

- Small Claims Court payment hearings, or
- Non-traffic municipal bylaw cases.

The elimination of payment hearings from the JJPs' list of duties came about because, under the *Small Claims Act*, JJPs may not preside over default hearings, and do not have powers to cite for contempt. The JJPs identified this problem to the Chief Judge in 2003 and, after review, the Chief Judge decided to assign these hearings to Judges.

The assignment of non-traffic municipal bylaw cases to Judges is being done for administrative reasons. The traffic-related bylaw cases (mainly parking tickets) will remain within the JJPs' assignment for the time being. A Vancouver North Shore pilot project is testing a process to handle parking violations and other simple ticket offences outside the court system. If this project is expanded throughout the province, a large part of the JJPs' workload will be removed.

## Appointment of Judicial Justices of the Peace

The appointment process for JJPs is now similar to that for Judges. The Judicial Council receives applications, interviews applicants and approves candidates for appointment. The Chief Judge, as chair of the Judicial Council, sends to the Attorney General the names of approved candidates who are recommended for appointment as vacancies become available. Appointments are by the Lieutenant Governor in Council.

No new JJPs were appointed during the 2002-2003 fiscal year. There was one appointment in 2003-2004.

In 2003, a new set of criteria for assessing candidates for the office was adopted by the Judicial Council:

- 10 years in the BC justice system, or commensurate experience
- possession of a JP Commission, or eligibility to hold one
- reputation in the justice system
- ability to listen and communicate effectively
- personal characteristics, including decisiveness, even temperament, fairness, open-mind, and common sense
- demonstrated dedication to public service

- understanding of the role of the court in society and of the roles of the judiciary and of the other participants in the system
- willingness to travel and perform all assigned duties, including shift work
- general knowledge of, and experience in, the law and Provincial Court procedures and subject matter
- compassion for those coming before the court and understanding of their circumstances
- adaptability and flexibility
- respect in the community
- humility
- balanced relationships with peers and subordinates
- ability to work with others
- appreciation of, and experience with, diversity
- willingness to learn and demonstrated commitment to continuing professional education and development
- knowledge of, and sensitivity to, current issues facing the courts, the judiciary and the justice system
- good health
- passion and enthusiasm
- experience in mediation or alternative dispute resolution.

A law degree or post-secondary education is not a pre-requisite, though many JJPs do have university degrees and some have law degrees. By contrast, Judges are required to have a law degree and a minimum of five years in legal practice.

## Tenure

JJPs are appointed "during good behaviour" and thus have security of tenure for judicial independence purposes. This means that as long as they are performing their judicial functions appropriately, their appointments continue until retirement age or until they choose to resign.

## Retirement Age

Mandatory retirement age for JJPs is 65. Retirement age for Judges is 70 years. The JJPs have asked that the mandatory retirement age for JJPs be extended to the age of 70 years, in line with Judges.

## Training

The Office of the Chief Judge provides training to JJPs and JPs. Semi-annual conferences of two and a half days each are held. The conference programs include presentations, workshops and seminars by leading members of the Bench and Bar of British Columbia. They cover a wide range of subjects, including sentencing principles, reasonable doubt, absolute and strict liability, mediation skills, developments in the law of search warrants and bail, and statutory interpretation. JJPs actively participate in the organization of these conferences.

JJPs maintain a desk book for ready reference. Individual JJPs have contributed many hours of personal time updating and improving this reference tool.

## Supervision & Assignment

The Chief Judge has responsibility for supervising JJPs, assigning them their duties, and reviewing complaints about them.

The court has a budget of about $38 million. Most of that is dedicated to salaries and benefits for Judges and JJPs, their travel expenses, and incidental expenses for facilities, supplies, and support services.

## Salary

JJPs currently earn a salary of $73,872 annually, exclusive of benefits.

The report of the 2002 Judicial Justice Compensation Committee (which was required to recommend salary levels for the calendar years 2001 to 2004) recommended the following increases to a base salary then of $70,312:

- 2001: 2.5%
- 2002: 2.5%
- 2003: 5.5%
- 2004: 9.0%

The government accepted the recommendations for the first two years and substituted 0% for the next two years. The government notes in its submission to this Commission that the increases that were accepted and implemented resulted in a 7.7% increase over the pre-2001 salary of $68,597, compared to a cumulative 23.8% which would have resulted had the Committee's recommendation been accepted in whole.

The JJP Association asks this Commission to recommend a rate that equals at least 65% of a Judge's salary, which currently is $161,250.

The government's position is that JJPs are being paid a fair and reasonable salary, and one that is commensurate with their more limited job functions. The government points out that a salary of 65% of the current Judges' salary

would amount to $104,812 and would represent an immediate increase of 41.9%. This, the government submits, is not reasonable or justified.

The government recommends the following salary adjustments, which are based on public sector negotiated settlements and the government's fiscal situation (discussed later in this report):

- 2004/05: 0%
- 2005/06: 0%
- 2006/07: 2%
- 2007/08: 2%

## Benefits & Allowances

The government's submission to this Commission reports the value of JJP benefits, including pension, at an additional 13.4% of base salary, or approximately $9,900 at current levels. This means a total compensation package for JJPs of approximately $83,772.

### Pension

Section 15 of the *Judicial Compensation Act* enables JJPs to opt into the Public Service Pension Plan. The Public Service Pension Plan is a multi-employer plan with more than 80,000 members. Under the Plan, JJPs receive the same pension benefits as those Deputy Ministers appointed after 2001, Crown counsel and CEOs of Crown corporations. The plan's 2% per year of service formula, blended with the Canada Pension Plan is, with some minor variation, what is offered to all B.C. public sector workers covered by the four main provincial sector pension plans and to full-time members of group 1 and 2 administrative tribunals.

The JJPs ask that their pension entitlements be increased in keeping with the more generous pension benefits afforded to Judges. Under section 21 of the *Judicial Compensation Act*, Judges are credited with 1.5 years of service for each year actually served in office.

The government's position is that the plan's goal of providing 70% of pre-retirement income is generally accepted as a sufficient level of income for retirement.

### Vacation

The evolution of the role of a JJP from a Court Services position, together with legislative developments since 2001, have resulted in discrepancies in vacation entitlements among the JJPs. Most have 22 days, 8 have 35 days, and two fall in between.

The government accepted the recommendation of the 2002 Compensation Committee, with the result that all new JJP appointees start at 22 days

vacation, regardless of whether they have accrued vacation time as government employees. After 10 years they move to 25 days. Judges are entitled to 30 days.

The JJP Association asks that the 30-day entitlement be extended to them as well, regardless of years in office. They also note that the differential vacation time amongst JJPs has resulted in significant morale problems internally. This is said to justify reducing the period of vacation time for those with 35 days to 30 days.

The government's position is that current vacation entitlements are reasonable and that the disparity caused by "grandfathering" early appointments from Court Services will eventually resolve itself as those people attain retirement age.

The Chief Judge takes no position on this issue except to observe that the differences in vacation entitlements do not create particular difficulties in scheduling or administration, although she agrees that they may affect morale.

## Chambers Days

Chambers days are non-sitting days assigned to Judges and JJPs to allow time for such duties as judgment writing, legal research, and continuing education. These days are assigned by the Chief Judge under section 11 of the *Provincial Court Act*. Normally, Judges are assigned one chambers day per week. In contrast, JJPs receive one chambers day per month. The JJP Association asks that this number be increased to two chambers days per month.

The Chief Judge takes the position that chambers days are not benefits but rather involve matters of judicial administration. Accordingly they are not within the jurisdiction of this Commission. The Chief Judge also says that, in any case, JJPs do not need further non-sitting days.

The government supported the position that chambers days are a matter for the Chief Judge to determine.

## Expenses

JJPs are entitled to be reimbursed[7] for their reasonable travel costs and out-of-pocket expenses incurred on the job. Under the *Financial Administration Act*, which is paramount on matters of government spending policies, per diem rates, including meal entitlements, are governed by Treasury Board policy set out in the Ministry of Finance *Core Policy and Procedures Manual*[8]. The section on Travel is set out in Appendix A. Expense reimbursement is determined based upon group designation, which is set out in Appendix B. JJPs are included in group 2; Judges are in group 3.

The difference in the total per diem rates allowed to Judges and JJPs is $6.25. There is also a separate lunch entitlement that Judges and JJPs can claim when away from their offices but not on full travel status. Policy permits lunch

expenses at the current rate of $10.50 for Judges and $8.75 for JJPs. All full-time administrative tribunal members are limited to group 2 rates.[9]

The Chief Judge's position is that the differences between Judges' and JJPs' expense reimbursements are not unreasonable in light of the differences between their respective jurisdiction and responsibilities.

## Professional development allowance

The Office of the Chief Judge provides JJPs with:

- a *Criminal Code* and relevant federal and provincial legislation
- JP Manual and Desk book
- access to computerized legal research resources
- court attire, with cleaning
- office computers
- business cards
- stationery
- support services
- expenses to attend semi-annual education conferences
- presentations at conferences by the Chief Judge's legal officer
- access to that legal officer for legal advice related to their duties
- periodic updates on legislation and case law and Practice Notes from the Chief Judge's legal officer
- cross-training in new duties with education sessions by Judges and the legal officer, and mentoring by senior colleagues, and
- systems support, software, and computer maintenance by OCJ staff.

The 2002 Judicial Justice Compensation Committee recommended an annual allowance of $1000 in addition to the above. That recommendation was rejected by government.

The JJP Association asks this Commission to recommend an annual allowance of $1,500.

## Ad hoc JJPs

There are currently two ad hoc JJPs. They are paid on a per diem basis[10] and must be prepared to work intermittently, sometimes full-time and sometimes not at all. The position is ideally suited to a retiree with a separate source of income and considerable experience in the BC justice system, such as a retired JJP, Court Services Manager or JP, or perhaps a retired lawyer.

The JJP Association asks that a minimum number of working days be guaranteed for ad hoc JJPs and that their per diem be set at the level paid to directors of Crown Corporations.

The Chief Judge's position is that scheduling judicial assignments is her responsibility and a recommendation of a minimum number of days of work would interfere with that discretion.

With respect to per diem rates, the current formula reflects the recommendation of the 2002 Judicial Justice Compensation Committee, which was accepted by government. Government's position is that this formula remains a reasonable one.

## A Senior JJP program

In 2001, a "Senior Judges Program" was introduced to the Provincial Court on a pilot project basis. Under the program, a Judge who is 55 years of age or older and has been a Judge for at least 10 years, can elect to work part-time (usually 50%) and receive the equivalent of a Judge's salary through a combination of salary and pension. Legislation and the co-operation of the Board of Trustees of the Public Service Pension Plan were required to implement the program.

JJPs recommend that an equivalent program be implemented for JJPs. They note that having the option of working part-time under a Senior JJP program would permit experienced JJPs to continue in their position for a longer period of time while alleviating the burnout that may be experienced in a lengthy career as a JJP and rejuvenating senior JJPs who have served full-time for a number of years. The government does not support creating a senior program for JJPs, noting that it was specifically designed to deal with Judges and their particular needs and expressing some concern that ultimately this type of program may result in higher costs to the province to support the pension plan.

The Chief Judge reports that several JJPs may be in a position to take advantage of such a program in the next few years. She does not oppose this recommendation and submitted to the Commission that it could have a positive effect on morale and the quality of justice.

# The Judicial Justice Compensation Commission

## Members

The Commission was appointed under section 3 of the *Judicial Compensation Act*. This new legislation continues the process that was formerly governed by the *Provincial Court Act*. It requires one member to be appointed by the Attorney General, and one by the Chief Judge of the Provincial Court after consulting with the JJP Association. Those two members appoint a third member to chair the Commission. The members are:

Deborah K. Lovett, Q.C. - Chair
John D. Waddell, Q.C.
Gillian P. Wallace, Q.C.

## Mandate

Under the *Judicial Compensation Act*, a Commission is created every three years to review and provide recommendations on the remuneration, allowances and benefits of JJPs for each of the next three years.

In preparing its report, the Act requires the Commission to consider all of the following:

- the government's current financial position
- the need to provide reasonable compensation to JJPs
- the need to maintain a strong court by attracting qualified applicants
- the laws of British Columbia, and
- any other matter the Commission considers relevant.

## Process

The Commission is grateful to the participants for the level of co-operation that has characterized this process. Rather than taking an adversarial approach, the representatives of government and of the JJP Association and others have approached the process constructively and in the spirit of dialogue and information-sharing. The Commission believes that this approach is wholly consistent with the type of informal, inquisitorial process contemplated by the *Judicial Compensation Act*.

The parties met together initially and proposed a process to the Commission. The Commission then met with the parties to finalize the process. This resulted in the exchange of comprehensive written submissions on behalf of the JJP

Association, the government (as represented by the Ministry of the Attorney-General) and the Office of the Chief Judge of the Provincial Court.

The Commission also advertised its process in the Victoria Times Colonist and Vancouver Sun newspapers, inviting public participation and comments. Additionally, the Commission established an information page on the Attorney General's website.

As was done by the 2002 Judicial Justice Compensation Committee, JJPs were invited to participate individually, and invitations to participate in this process were sent to a number of interested groups, namely the:

- BC Provincial Court Judges Association
- Canadian Bar Association
- Judicial Council of British Columbia
- Law Society of British Columbia
- Legal Services Society
- Trial Lawyers Association of BC
- Union of British Columbia Municipalities
- BC Association of Chiefs of Police, and
- BC Crown Counsel Association.

In response, written submissions were received from the Judicial Council, the Law Society, JJP Joan Hughes and JP Victoria Lyon. The Commission notes that the submissions of JJP Joan Hughes were comprehensive and helpful, providing a detailed account of the day-to-day experience of a JJP working and traveling through one of the more rural areas of the province.

Less formal responses were received from the following individuals: Chuck and Norma Bellanger, Charles Dalgarno, Wilma E. Lucas, and Irvin F. Haworth.

Copies of these submissions and responses were provided to all the parties and have been considered by the Commission in developing its report and recommendations.

Following the exchange of submissions, the Commission conducted an oral hearing, which occupied some three and a half days. During the course of this hearing, witnesses were called by both the government and the JJP Association, and oral submissions were made by representatives of the JJP Association, the government, the Chief Judge and the Judicial Council. In particular, Michael Butler, Consultant and former senior Ministry of Finance official, was called to give evidence about the government's fiscal situation and Annette Wall, Assistant Deputy Minister, Public Sector Employers' Council Secretariat, about public sector compensation policies. The JJP Association called Ian McKinnon, Consultant, Pacific Issues Partners, to give a presentation in support of its submissions relating to the government's financial situation.

Finally, the Commission members visited courtrooms and the Judicial Justice Centre to gain a first hand understanding of the work that JJPs do.

Hard feelings did result from the government's rejection of some of the recommendations of the 2002 Judicial Justice Compensation Committee. For example, this Commission acknowledges the sentiments expressed in the letter from JJP Gary Madrick (provided to the Commission during its oral hearings), who felt that his contribution to the 2002 process had not proven to be time well spent.

# The Report

Sections 5 and 6 of the *Judicial Compensation Act* set out the process by which the Commission's report is received by government.

The Commission must submit a preliminary report to the Attorney General and the Chief Judge by September 1st, 2004. The Attorney General and Chief Judge have two weeks to ask the Commission for clarification of anything in the report and the Commission has two weeks to respond to any such request.

The Attorney General then puts the final report before the Legislative Assembly. If the Legislature is sitting when the Attorney General receives the report, it must be tabled within seven days; if the Legislature is not sitting, it must be tabled within seven days after the opening of the next session.

The Legislature then has 28 days to consider the report. It may reject a recommendation if it considers it to be unfair or unreasonable. However, in the *Provincial Court Judges Reference*, the Supreme Court of Canada ruled that the Legislature must be prepared to justify a decision to reject a recommendation, in a court of law if necessary.

Any recommendation that is not rejected takes effect as of April 1 in the applicable year.

## The reporting cycle

The process is designed around a regular three-year cycle. Because the Judicial Justice Compensation Committee report was released in 2002, one would not expect a second report until 2005. However, the new *Judicial Compensation Act* provides for a transition to a process that synchronizes with both the government's fiscal year (rather than the calendar year) and the Judges' compensation process. In order to accomplish that transition, this Commission was appointed to make recommendations to take effect as of January 1, 2005 and for the following three fiscal years (i.e. April 1, 2005- March 31, 2006; April 1, 2006-March 31, 2007; and April 1, 2007-March 31, 2008). Thereafter, Commissions will be appointed on a three-year cycle.

## The Parallel Judges Compensation Process

Under the *Judicial Compensation Act*, the Judicial Justices Compensation Commission and the Judges Compensation Commission are established concurrently, the latter making compensation recommendations for Judges, and the former for JJPs. Under the Act, both Commissions have the same powers, are required to take identical factors into consideration, and have identical reporting requirements.

This means that both Commissions receive and consider the same information about BC's fiscal situation in parallel Commission hearings. Because they work independently of each other, it is possible for the two Commissions to come to different conclusions in respect of "the current financial position of the government" based on the same information. While this appears to be contemplated by the legislation it nevertheless is of some concern to the Commission. The Commission also questions the cost-effectiveness of a separate Judicial Justices Compensation Commission to deal in part with overlapping subject matter for a group of about 30 judicial officers who are directly supervised by the Chief Judge.

These are observations only; clearly the Commission's statutory mandate does not ask it to make recommendations about the process established under the legislation.

# Determining Compensation

As is noted above, the *Judicial Compensation Act* requires the Commission, in preparing its report, to consider:

1. the current financial position of the government
2. the need to provide reasonable compensation to JJPs
3. the need to maintain a strong court by attracting qualified applicants
4. the laws of British Columbia, and
5. any other matter the Commission considers relevant.

## The Government's Current Financial Position

The Supreme Court of Canada, in the *Provincial Court Judges Reference*, ruled that while judicial salaries must not fall below an acceptable minimum level, the courts cannot be shielded from the effects of deficit reduction: "Nothing would be more damaging to the reputation of the judiciary and the administration of justice than a perception that Judges were not shouldering their share of the burden in difficult economic times."[11]

The government's submission on its current financial position noted that BC's economy has deteriorated relative to most other provincial economies over the last several years. Perhaps the most dramatic illustration of this is the fact that, for equalization payment purposes, BC is now considered a "have not" province. In addition, in 2001, the report of an independent Fiscal Review Panel concluded that current government spending levels were unsustainable.

The government's approach to the economic situation has been to develop a two-pronged strategy encompassing a competitive tax regime and a sustainable fiscal policy, including a commitment to balanced budgets. (The government not only has a commitment to balancing the budget; it is now a legislative requirement.) To implement the policy, tax reductions were introduced and significant spending cuts were made throughout the public sector. This includes significant budget reductions in the Ministry of Attorney General. These reductions will continue into 2006-07. The government also highlights particular recent events that have adversely affected the provincial economy, namely the softwood lumber dispute with the US, damaging forest fire seasons, and a sharp increase in the value of the Canadian dollar.

An integral part of the government's strategy to control expenditures has been its approach to public sector compensation. Public sector compensation represents an annual cost of about $15 billion, or about 53% of government expenses. Cabinet developed a mandate for the Public Sector Employers' Council in the fall of 2001, to be implemented for all agreements negotiated after January 1, 2002 and extending through 2005/06, which calls for 0% net increases during this period of time.

The four key principles on which the mandate is based were outlined by Annette Wall, Assistant Deputy Minister, Public Sector Employers' Council Secretariat. Those four principles are:

1. affordability (government's fiscal situation, the employer's ability to pay, and the legal requirements of balanced budget legislation)
2. sustainability of public services (ensuring salary levels are competitive and meet the needs of a professional public service)
3. productivity (productivity gains can be shared with workers), and
4. differentiation (mandates are to be targeted to the specific needs of individual sectors).

It was also noted that within the mandate and the broad requirement for the achievement of a net 0% change in total compensation, there was some flexibility to deal with market adjustments when *bona fide* labour shortages exist.

All agreements that have been reached with public sector unions since January 1, 2002 have been within mandate.

The government notes that it is just now achieving a balanced budget after three years of significant deficits. The 2004-2005 budget forecasts a $100 million surplus for the current fiscal year, a $275 million surplus for 2005/06, and $300 million for 2006/07. These are simply forecasts, however, and they remain subject to a number of risks, including increases in public sector compensation. For example, a hypothetical 1% increase across the board would cost $150 million and would more than eliminate all the forecasted budget surplus of 2004-05.

The government concedes that JJPs are not government employees, but urges that their compensation be approached in a manner consistent with public sector compensation generally.

The JJP Association presented evidence (through Ian McKinnon) to the effect that while there has been "lack-lustre" growth in the BC economy, the province's debt has been growing more slowly. BC continues to have one of the lowest debt to GDP ratings of all provinces and it has maintained strong bond ratings. It submits that the government's overall financial position is sound and, given the Finance Ministry's record of conservative forecasting, there is every reason to be confident in its projections of surpluses over the next three years.

The JJP Association notes that during the time when the government justified 0% increases for JJPs on the basis of the government's financial position, it granted increases to Judges. The government responds that it was a matter of timing: the recommendations of the 2002 Judicial Justice Compensation Committee were accepted before government had developed its fiscal plan and its policy on public sector compensation. Once accepted, the recommendations of a Compensation Commission cannot be altered.

# The Need to Provide Reasonable Compensation

The focus of the Commission's work is to report and make recommendations to the Attorney General and the Chief Judge on "all matters respecting the remuneration, allowances and benefits" of JJPs. In considering what changes, if any, should be recommended to present levels of remuneration, allowances and benefits, the Commission is specifically directed to take into account the government's fiscal position. It also must consider whether those levels are such that they fall below the minimum mandated by constitutional considerations.

Determining what is "reasonable" compensation is a somewhat challenging task. In considering what is reasonable in all of the circumstances, this Commission has taken into account a number of factors.

## The nature of the work

As noted, in order to better understand the work that JJPs do, the Commission visited courtrooms and spent time at the Judicial Justice Centre observing JJPs at work. From the account given by JJP Joan Hughes, it appears that JJPs in rural areas may face some unique challenges.

JJPs who sit in court carry out their duties in the public eye, and for large numbers of British Columbians appearing before them, they are the face of the Provincial Court. The government acknowledges that the biggest challenge JJPs must face is that of dispensing justice quickly and evenly, usually to unrepresented people who have an imperfect, if any, understanding of the legal process they are involved in.

Those who work at the 24-hour Judicial Justice Centre are often pressed to respond quickly to requests for search warrants and to applications for bail. It can be stressful to resist a police officer's incomplete application for a search warrant. The JJP is left to balance the interests of a person who knows nothing of the application, against a police officer who may feel a personal stake in the outcome: this delicate role played by JJPs must be acknowledged and respected.

At the same time, the workload of JJPs is variable. There are often "down times" in court, when defendants fail to appear. Likewise, there are many quiet times at the Judicial Justice Centre, when no applications are pending. At other times, the workload can be heavy. Some shifts are taken at home, with the JJP being awakened only as necessary. Bail applications are often an interim process, with the accused person deciding to stay overnight, get legal advice, and apply to a Judge for bail in the morning.

Additionally, the Commission cannot discount the fact that the responsibilities of JJPs are diminishing and that their jurisdiction has been narrowed significantly. JJPs can no longer hear and decide any type of constitutional question, have no contempt powers and are unable to decide any cases that carry a possible sentence of imprisonment. While the narrowing of their

jurisdiction is not a matter over which JJPs have control, their actual statutory responsibilities and duties are an important factor for the Commission to take into account when determining reasonable compensation levels for the work that they do.

## Comparisons

### With Provincial Court Judges

The JJP Association argues that "a Judge is a Judge is a Judge" and that to the people appearing before JJPs, they are the face of the court. The Association urges that the JJP role is similar enough to that of a Judge that JJP salaries should be fixed as a percentage of judicial salaries. They submit that a benchmark be set at 65% of a Judge's salary and that JJP salaries never be allowed to fall below that mark, which was the ratio that prevailed in 1978.

The government disagrees. The government submits that there are major differences between the two positions in terms of qualifications and scope of authority that make a comparison with Judges inapt.

While some of the requisite qualifications for both positions are the same (e.g. personal characteristics such as decisiveness, and the ability to listen and communicate effectively), there are three main differences. An applicant for the position of Judge must:

1. be a lawyer with at least five years of practice
2. have a high legal reputation, measured by references from the Canadian Bar Association and Judges before whom he or she has appeared, and by review of the lawyer's professional record with the Law Society, and
3. have knowledge and experience in the law and in Provincial Court procedure, preferably with recent practice experience in criminal, family or civil litigation.

In terms of the scope of authority, Judges exercise a far greater jurisdiction than JJPs, and they do so in much more complex and varied areas of the law.

### With JJPs in other provinces

The government cautions against comparisons with JJP salaries in other jurisdictions because of significant differences in:

- qualifications for JJP positions
- jurisdiction of JJPs (or their equivalent)
- remuneration processes, and
- the financial positions of other provinces.

For example, Alberta's Sitting JPs, who are paid $85,000 annually, are required to be lawyers with at least five years' experience in practice and are appointed for non-renewable limited-term contracts. They do not have a benefit package

and do not have the equivalent of BC's Public Service Pension Plan. (A Compensation Commission's recommendations would have set their salary at $105,000 in 2002 but those recommendations were rejected by the government and are the subject of ongoing litigation. A hearing before the Supreme Court of Canada is scheduled for November this year.)

In Ontario, JJPs have a broader jurisdiction than in BC: in certain circumstances they can impose fines of up to $1 million per day, and they can send people to jail for up to two years. Ontario JJPs who hear bail and search warrant applications earn less than those who sit in court.

**With administrative tribunals**

The government makes the point that the primary difference between JJPs and administrative tribunals is generality versus specialization. Also, while some tribunal members receive a full-time salary, many tribunal members are compensated on a per diem basis and do not receive government benefits such as pension and extended medical coverage.

The government submits that, while there are these differences, JJPs are analogous to certain administrative tribunals in several respects:

- the way they carry out their duties
- their working conditions
- their dealings with unrepresented people
- their limited statutory jurisdiction, and
- their relaxed rules of evidence and procedure.

Not all administrative tribunals are comparable: some have regulatory as well as adjudicative functions, and some deal with more complex subject matter than do JJPs.

The remuneration for Provincial administrative tribunals is set by Treasury Board Directive under authority of the *Financial Administration Act*. A recent Directive released in March of this year set revised maximum salaries for full-time tribunal appointees, and revised flat per diem entitlements for part-time chairs, vice-chairs and members. The maximum allowable salaries for full-time appointees may be paid to those who have substantial, relevant experience. The per diem rates range from $350 to $525 per day. Policy objectives include establishing proportionality between full-time and part-time remuneration rates and ensuring that remuneration is sufficient to attract and retain highly skilled and qualified individuals.

Two groups of full-time tribunal members are established under the Treasury Board Directive. Within those two groups are different maximum allowable salaries for chairs, vice-chairs and members, recognizing that tribunal chairs have significant managerial and administrative responsibilities. Vice-chairs are required to exercise those managerial and administrative responsibilities when

the chair is absent. The maximum salary levels for group 1 and group 2 full-time tribunal appointees are as follows:

| TRIBUNAL GROUP | CHAIR | VICE-CHAIR | MEMBER |
|---|---|---|---|
| GROUP 1 annual rate | $105,000-120,000 | $84,000-96,600 | $66,150-75,600 |
| GROUP 2 annual rate | $130,000-160,000 | $104,000-128,000 | $81,900-100,800 |

Both the JJP Association and JJP Joan Hughes submit that the work of JJPs is comparable to the work of vice-chairs and members of group 2 tribunals. There are only four tribunals included in group 2 under the Directive. Those tribunals are: the Human Rights Tribunal, the Oil and Gas Commission, the Utilities Commission and the Workers' Compensation Appeal Tribunal.

The government suggests that the most apt comparisons are with group 1 tribunal members. The comparison to members, rather than chairs or vice-chairs, is suggested because JJPs do not have managerial functions. Group 1 is suggested rather than group 2 because group 2 tribunals require highly specialized or expert backgrounds in the areas of law in which they function.

For example, the Oil and Gas Commission and Utilities Commission are both highly expert tribunals with wide-ranging regulatory and adjudicative responsibilities. Commission members most often have industry-specific technical expertise. Similarly, the newly established Workers' Compensation Appeals Tribunal has broad regulatory, policy-making and adjudicative responsibilities in relation to the complex legal regime established under the *Workers' Compensation Act*. This tribunal routinely decides questions of law, both common law and statute-based, and sits in an appellate capacity. The legal issues that the Human Rights Tribunal is called upon to decide are often complex, governed by an extensive body of jurisprudence and are recognized as having quasi-constitutional dimensions. It has a broad remedial jurisdiction and its decisions are in writing and are often reported.

Included within the group 1 tribunals are the Parole Board, the Criminal Code Review Board, the Expropriation Compensation Board and Mental Health Review Panels. Mental Health Review Panels are established under the *Mental Health Act* to periodically conduct hearings into whether people who are involuntarily committed to mental health hospitals should continue to be detained. They hear a high volume of cases and must make decisions quickly and in writing. Their decisions affect the liberty interests of the patients who have asked for the review. Their jurisdiction is narrow, and the decisions they make are largely fact-based. Proceedings are less formal than court proceedings, and members may take into account any information that is relevant, regardless of whether it would be admissible in a court of law.

The Criminal Code Review Board presides over review proceedings under Part XX.1 of the *Criminal Code* (the Mental Disorder Provisions). This tribunal holds hearings to determine

- whether people who have either been found unfit to stand trial continue to be unfit, and
- whether people who have been found not guilty of a criminal offence by reason of a mental disorder should be released, either conditionally or absolutely, into the community.

Proceedings before this tribunal are regulated by the *Criminal Code*.

The Parole Board is established under the provincial *Parole Act* and it also has some of the responsibilities of the National Parole Board. Its hearings are relatively informal and more inquisitorial in nature. Its jurisdiction is focused on whether or not people sentenced to prison should be released on parole.

The Expropriation Compensation Board is established under the *Expropriation Act* primarily to decide complex valuation, compensation and costs issues arising as a result of government expropriations. The tribunal's rules of practice and procedure in some respects mirror those of the BC Supreme Court and its decisions are in writing and are often reported.

## The Need to Attract Qualified Applicants

At the end of 2003, there were nine approved candidates available for recommendation for appointment as JJPs; by September 2004 this will have fallen to five, due to expiries (approved applicants are dropped from the list if they are not appointed within three years) or appointments. Over the next few years, the Judicial Council expects JJP vacancies to arise at the rate of about two to four per year.

The Judicial Council expressed concern that the pool of qualified candidates may be dwindling. During the most recent recruitment, in 2003, only 48 applications were received. This was many fewer than were attracted previously, possibly due to the new requirement of 10 years justice system experience or equivalent. Of those 48 applicants, nine were interviewed and seven were approved.

Historically, qualified candidates have come from within the Court Services Branch. They came with years of relevant experience, having worked in courtrooms and performed bail and search warrant duties. However, with bail and search warrant duties now confined to JJPs, government employees in the court system have fewer opportunities to develop the knowledge and expertise required to perform JJP duties.

Recruitment from outside the Court Services Branch in recent years has resulted in the appointments of lawyers, senior police officers and other professionals and people with post-graduate education. The Judicial Council recommends that JJP salaries be maintained at a level that will continue to attract qualified outside applicants with appropriate education and professional and adjudicative experience.

The Law Society of BC strongly supports this position and urges that remuneration and benefits paid to JJPs be as competitive as possible, to encourage applications from the most qualified members of the bar.

The government's position is that there is no difficulty in attracting qualified applicants for the position of JJP at current salary levels.

## The Laws of British Columbia

In the preparation of its report and recommendations, the Commission has considered the common law principles of judicial independence as they have been developed in the case law and applied to JJPs, as well as the statutes of British Columbia, including the:

- *Judicial Compensation Act*
- *Provincial Court Act*
- *Offence Act*, and
- *Balanced Budget and Ministerial Accountability Act*

## Any Other Matter the Commission Considers Relevant

No other matter that the Commission considered relevant was brought to the attention of the Commission in its proceedings.

# Analysis and Recommendations

## Salary

After carefully considering all of the information that was put before it, the Commission recommends that the salaries of JJPs be set at $75,600 on January 1, 2005 and that for the next three fiscal years the increments be:

| | |
|---|---|
| April 1, 2005 - March 31, 2006 | 0% |
| April 1, 2006 - March 31, 2007 | 2% |
| April 1, 2007 - March 31, 2008 | 2% |

In making this recommendation, the Commission has taken a number of factors into account.

First, while the Commission recognizes that JJPs are not public servants, they are part of the broader public sector and the salaries of JJPs are paid from the public purse. The government has implemented extraordinary measures to deal with the slow growth of the British Columbia economy and its commitment to balance the budget. In the absence of other factors, such as an expansion in the mandate of JJPs so that the salary level no longer reflects the role and responsibilities of JJPs, or an inability to attract qualified applicants, the Commission is of the view that, in times of fiscal restraint, JJPs should be treated in a manner that is consistent with the broader public sector. This reflects the Supreme Court of Canada's direction in the *PEI Reference* that Judges should "shoulder their share of the burden in difficult economic times".

Second, the jurisdiction of JJPs has been markedly reduced since the current salary levels were set.

Third, while the Judicial Council expressed some concern that the pool of qualified candidates may shrink in the future, no evidence was presented to support the position that the pool was not adequate to fill the number of anticipated vacancies in the next several years.

Fourth, the Commission carefully considered appropriate comparators and found them to be significant in making its recommendation on salary. In approaching this matter, the Commission first notes that it does not accept the position of the JJP Association that JJP salaries should be set at 65% of a Judge's salary. While the roles and responsibilities of JJPs overlap with those of Judges to some extent,[12] overall their jurisdiction and authority is significantly narrower than that of Judges. Also, they operate in proceedings that are, for the most part, less legalistic and formal than those over which Judges preside. The focus of their court work is on matters that do not attract sentences of imprisonment and the fines generally imposed by JJPs are relatively low.

Additionally, JJPs are not required to be legally trained and have no authority to make decisions on complex constitutional questions or to punish individuals for contempt of their processes. For the most part, decisions are fact-based and are rendered orally; written reasons are very much the exception rather than the norm. This is consistent with their limited jurisdiction and the nature and type of high-volume work in which they are engaged.

For these reasons, the Commission does not accept that the position of Judge is the best comparator for purposes of determining reasonable salary levels for JJPs, and is unwilling to recommend that JJP salaries be pegged to a percentage of Judges' salaries.

Nor does the Commission believe that the salaries of JJPs in other jurisdictions are appropriately considered. The functions and qualifications of JPs vary considerably from province to province and so comparisons with their various salaries cannot reasonably be made.

The Commission does agree with the JJP Association that a comparison with salaries of government managers is not appropriate as the responsibilities and roles of government managers are considerably different from those of JJPs.

The Commission's view is that the most appropriate comparator for salary purposes is with administrative tribunal members who exercise powers and jurisdiction that most closely resemble those of JJPs. Appreciating that the most significant difference between administrative tribunals and JJPs is that the former do not enjoy any of the constitutional safeguards of judicial independence, the Commission nevertheless does not see this distinction as a basis for not looking to the salaries of tribunal members as a measure of what is reasonable compensation in all of the circumstances.

The JJP Association says that, to the extent that administrative tribunals are the comparator, JJP duties and responsibilities are most akin to those of vice-chairs and tribunal members in the group 2 tribunals. However, the Commission does not agree. Unlike vice-chairs, JJPs do not exercise managerial or administrative responsibilities in addition to their adjudicative responsibilities. The Commission agrees with the government that the group 2 tribunals deal with more complex legal or technical subject matter than do JJPs. Additionally, some of these tribunals have broad regulatory responsibilities and policy making functions in addition to their adjudicative duties.

The Commission's view is that reasonable comparisons can be drawn between the work of JJPs and the work of some of the group 1 tribunals, namely the Mental Health Review Panels, the Criminal Code Review Board and the Parole Board. All of these tribunals have a limited and focused jurisdiction; all are involved in proceedings that affect individual liberty interests; in respect of two of these tribunals, legislation has been enacted to expressly take away any jurisdiction to consider constitutional questions; the proceedings are conducted relatively informally; the rules of evidence are more relaxed; and often participants are not represented by counsel. For all these reasons, the

Commission has concluded that it is appropriate to look to the salary range applicable to members of these group 1 tribunals when considering what JJP salary levels are reasonable, fair and sufficient to continue to attract qualified applicants in future.

The establishment of salary ranges for tribunal members is a new development, implemented since the last consideration of JJP compensation and following a review by government. The Commission feels it is important to carefully assess the salaries of JJPs in light of this new Directive because it explicitly addresses salary levels for positions that offer the most appropriate comparison to that of a JJP.

The salary of a JJP, at $73,872, is within the range of group 1 tribunal members ($66,150 to $75,600). However, it is almost $2000 less than the maximum allowable salary in this range. The Commission believes that the salaries of JJPs are appropriately compared with the salaries of group 1 adjudicators, but that their salaries should be set at $75,600, the maximum under the policy, in recognition that JJPs adjudicate matters involving more than one statute and that in doing so they act in a judicial capacity.[13]

The recommendation of a 0% increase for 2005/06 reflects the Commission's recognition of the realities facing public sector employees generally, balanced against an adjustment that will achieve consistency with the new salary scale for administrative tribunals.

Finally, the Commission believes that by April 1, 2006 a reasonable salary increase is justifiable to deal with inflation. The Commission has set this rate at 2% for each of the two following fiscal years, as recommended by the government.

## Pension

JJPs have asked to receive the same pension benefits that Judges are entitled to under section 21 of the *Judicial Compensation Act*. This section credits Judges with 1.5 years of service for each year actually served. The Commission believes this to be an extraordinary benefit that has been accorded to Judges for many years (and until relatively recently also to Deputy Ministers). The justification appears in part to be based on the fact that Judges accept appointments to the bench in mid-to-late career.

The Commission does not believe that such an extraordinary pension entitlement is necessary, either as a component of reasonable compensation or to attract qualified applicants for JJP positions. While, as the JJP Association emphasized in their submissions, the costs of providing this benefit to JJPs would be relatively minimal because of the small numbers involved, the Commission does not see this as being a compelling justification for doing so.

For these reasons, the Commission makes no recommendation for change.

## Retirement Age

The Commission's jurisdiction is restricted by section 5 of the *Judicial Compensation Act* to making recommendations respecting "the remuneration, allowances and benefits" of JJPs. The Commission finds that the retirement age for JJPs is not a matter that comes within the scope of its jurisdiction, as it does not relate to JJP remuneration, allowances or benefits. The Commission makes no recommendation for change.

## Vacation

The Commission recommends that vacation entitlement be set at 30 days for all Judicial Justices of the Peace. This represents an increase from 22 days for most JJPs but a decrease from the 35 days that some are entitled to. We are informed by the JJP Association that this is acceptable to its members, including those who would be subject to a decrease in their vacation entitlements, and will address a serious morale issue resulting from differential vacation entitlements.

## Ad Hoc JJPs

The Commission does not recommend any change in the per diem rates of ad hoc JJPs. It notes that the government accepted the recommendation of the last Commission on this matter and it has not been convinced that this decision needs to be revisited.

## Senior JJP Program

The Commission recommends that a Senior JJP program be developed, similar to that which exists for Judges, to provide JJPs who are of retirement age and have served for a sufficient period of time with the option of electing part-time status. This would assist in retaining experienced JJPs at a time when they may not wish to continue to work full-time. It is recognized that implementation of this program will require legislation and the co-operation of the Board of Trustees of the Public Sector Pension Plan.

## Travel Expenses

The Commission's view is that reimbursement for the expense of work-related travel is not a "benefit" for purposes of section 5 of the *Judicial Compensation Act* and thus is a matter outside the scope of the Commission's jurisdiction. However, even if it can properly be considered a benefit, the Commission views the present levels of expense reimbursements to be appropriate and in line with those afforded to both group 1 and group 2 administrative tribunals. The Commission therefore makes no recommendation for change in reimbursement amounts available to cover travel expenses.

## Chambers Days

The Commission agrees with the Chief Judge that the assignment of chambers days is a matter of judicial administration and is outside the jurisdiction of this Commission. The Commission adds that a primary purpose of providing chambers days to Judges is for judgment writing and legal research purposes and JJPs are only very occasionally required to provide written reasons.

## Professional Development Allowance

The issue for this Commission is whether JJPs require a professional allowance for the proper execution of their office or professional development, in light of their assigned duties and the support already supplied by the Office of the Chief Judge. While the JJP Association asks for a blanket amount of $1500 for each JJP, the Commission's view is that this amount exceeds what is reasonable in all the circumstances and that an automatic entitlement to a set amount does not provide sufficient accountability for its expenditure.

In recognition of the JJPs' responsibility to maintain and enhance their professional skills and qualifications, the Commission recommends that JJPs each be afforded a maximum allowance of $500 per year. We also recommend that the Chief Judge have the discretion to approve or disapprove all expenditures of the allowance and that guidelines be put in place with respect to the appropriate use of the funds.

## Costs of this Application

The government has agreed to the request by the JJP Association for reimbursement of its costs of participating in this process, to a total of $11,500.

# Summary of Recommendations

## Salary

The Commission's recommends that the salary of JJPs be set at $75,600 on January 1, 2005 and that for the next three fiscal years the increments be:

| | |
|---|---|
| April 1, 2005 - March 31, 2006 | 0% |
| April 1, 2006 - March 31, 2007 | 2% |
| April 1, 2007 - March 31, 2008 | 2% |

## Pension

The Commission makes no recommendation.

## Retirement Age

The Commission makes no recommendation.

## Vacation

The Commission recommends that vacation entitlement be set at 30 days for all JJPs.

## Per Diem Rates for Ad Hoc JJPs

The Commission makes no recommendation.

## Senior JJP Program

The Commission recommends that a Senior JJP program be developed, similar to that which exists for Judges, to allow JJPs who are of retirement age and have served for a sufficient period of time, the option of electing part-time status.

## Travel Expenses

The Commission makes no recommendation.

## Chambers Days

The Commission makes no recommendation.

## Professional Development Allowance

The Commission recommends that JJPs each be afforded a maximum allowance of $500 per year, subject to the Chief Judge's discretion to approve or disapprove expenditures. The Commission also recommends that guidelines be put in place with respect to the appropriate use of the funds.

## Costs of this Application

The government agreed to reimburse the JJP Association for of its costs of participating in this process, to a total of $11,500, and the Commission recommends that such payment be made.

# Commission Comments

The Commission acknowledges and thanks the Chief Justice and the representatives of her office, the Judicial Council, the JJP Association and the government for their helpful and thorough submissions.

The compensation issues that formed the focus of the Commission's work, by their very nature, evoked strong feelings and heartfelt emotions on the part of the JJP representatives. It is no doubt extremely challenging for JJPs to be placed in the unenviable position of having to defend and justify their expertise and their value to the justice system. It was apparent to the Commission that not only were they passionate and wholly dedicated to their cause, but they worked tirelessly to provide the Commission with all relevant information available to support their case for more improved compensation and benefits.

The Commission is particularly grateful to the JJP Association and the government for the spirit of cooperation and the collegial, constructive and balanced tone that dominated the Commission's proceedings.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED:**

2004 Judicial Justices Compensation Commission

**Gillian P. Wallace, Q.C.**

**John D. Waddell, Q.C.**

**Deborah K. Lovett, Q.C., Chair**

Victoria, British Columbia, August 30, 2004.

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[1] *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island* [1997] 3 SCR 3.

[2] As noted by the Supreme Court of Canada in *Ell v. Alberta*, 2003 SCC 35 at para. 18: "The principle [of judicial independence] finds explicit constitutional reference in ss. 96 to 100 of the Constitution Act, 1867 and s. 11(d) of the *Canadian Charter of Rights and Freedoms*. The application of these provisions is limited: the former to judges of superior courts, and the latter to courts and tribunals that determine the guilt of those charged with criminal offences ... as this Court has recognized, the principle of independence extends beyond the limited scope of the above provisions".

[3] *Re Independence of the Provincial Court of British Columbia Justices of the Peace*, 2000 BCSC 1470.

[4] *Ell v. Alberta*, 2003 SCC 35 at para. 18.

[5] See footnote 3

[6] *Attorney General Statutes Amendment Act*, SBC 2002, c.37

[7] *Judicial Compensation Act*, SBC 2003, c.59, section 10

[8] http://www.fin.gov.bc.ca/ocg/fmb/manuals/CPM/10_Travel.htm#1041)

[9] Treasury Board Directive 3/04

[10] The per diem is calculated according to a formula and equals 80% of the JJP annual salary, divided by the number of working days in the year.

[11] Para. 196

[12] Judges have all the powers of JJPs and JPs.

[13] The Commission notes that, but for the establishment of an independent committee to consider and report on JJP compensation in 2002, the JJPs would have had the benefit of a 3.2% increase in salary in 2003/2004 because prior to that, their salary increases were linked to those given to public service employees. Those employees received a 3.2% increase in 2003/2004.